

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Investigation by the Department on its own motion as to )  
the propriety of the rates and charges set forth in the )  
following tariffs: M.D.T.E. Nos. 14 and 17, filed with the ) D.T.E. 98-57  
Department on August 27, 1999, to become effective )  
September 27, 1999, by New England Telephone )  
Telegraph Company d/b/a Bell Atlantic-Massachusetts. )

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HEARING OFFICER RULING GRANTING VITTS NETWORKS'

LATE-FILED PETITION TO INTERVENE

AS A LIMITED PARTICIPANT

I. BACKGROUND

On April 15, 1999, the Department issued a notice of public hearing and procedural conference in this docket which set a May 10, 1999 deadline for the filing of petitions to intervene. On November 4, 1999, Vitts Networks, Inc. ("Vitts") filed an untimely petition to intervene ("Petition") as a limited participant in this docket. On November 10, 1999, the Department issued its latest revised procedural schedule in this docket. On November 17, 1999, Vitts filed a Re-Submitted Petition to Intervene ("Re-Submitted Petition") which incorporated the original Petition and provided additional support for its request to intervene. The Department received no responses to either the original Petition or the Re-Submitted Petition.

II. LATE-FILED PETITION TO INTERVENE

A. Standard of Review

#### Untitled

The Department's regulations require that a petition to intervene describe how the petitioner is substantially and specifically affected by a proceeding. 220 C.M.R. §1.03(1)(b); see also G.L. c. 30A, § 10. In interpreting this standard, the Department has broad discretion in determining whether to allow participation, and the extent of participation, in Department proceedings. *Attorney General v. Department of Public Utilities*, 390 Mass. 208, 216 (1983); *Boston Edison Company v. Department of Public Utilities*, 375 Mass. 1, 45 (1978) (with regard to intervenors, the Department has broad but not unlimited discretion), cert. denied, 439 U.S. 921 (1978); see also *Robinson v. Department of Public Utilities*, 835 F. 2d 19 (1st Cir. 1987). The Department may allow persons not substantially and specifically affected to participate in proceedings for limited purposes. G.L. c. 30A, § 10; 220 C.M.R. § 1.03(1)(e); *Boston Edison*, 375 Mass. at 45. A petitioner must demonstrate a sufficient interest in a proceeding before the Department will exercise its discretion and grant limited participation. *Boston Edison*, 375 Mass. at 45. The Department is not required to allow all petitioners seeking intervenor status to participate in proceedings (*id.*).

In ruling on late-filed petitions to intervene, or otherwise participate in its proceedings, the Department takes into account a number of requirements and factors in its analysis. First, the Department considers whether a petitioner has demonstrated good cause for late-filing. See 220 C.M.R. § 1.01(4). While "good cause" may not be readily susceptible of precise definition, the proponent of a waiver must make a convincing showing of good cause and may not reserve such a showing for a later appeal of the Hearing Officer's ruling. See *Bay State Gas Company*,

D.P.U. 95-52, at 2 Interlocutory Order (July 21, 1995). Administrative efficiency requires that a proponent of a waiver state all available grounds at the time the ruling is requested. If the Department finds that there is good cause and that the petitioner is substantially and specifically affected, then the Department balances the extent of participation against the need to conduct a proceeding in a complete, efficient and orderly fashion. When balancing, the Department has considered: (1) the extent of the delay, (2) the effect of the late participation on the ongoing proceeding, and (3) the explanation for the tardiness. *Western Massachusetts Electric Company*, D.P.U. 92-8C-A at 5 (1993); *NYNEX*, D.P.U. 94-50 at 3 (1994).

#### B. Position of the Parties

VitTs states that it is a facilities-based competitive local exchange carrier ("CLEC") authorized to provide telecommunications service in Massachusetts and that, as a competitor in Massachusetts, VitTs' interests are directly affected by the present proceedings as the proposed terms contained in the instant tariff will supercede an existing interconnection agreement VitTs has entered into with Bell Atlantic (Petition at 1). VitTs indicates that no other existing party's participation can adequately represent VitTs' interests and is concerned that Bell Atlantic's filing will undermine its ability to effectively compete in the Massachusetts market (*id.*). VitTs also asserts that its participation will enhance the Department's consideration of the issues in this investigation, particularly as they affect the ability of data communication carriers to enter the local services market and compete with the incumbent local exchange carrier (*id.*).

#### Untitled

Vitts indicates that its request to intervene is late because it only recently became fully operational in Massachusetts and, that up to approximately September 1999, Vitts was physically collocated in relatively few Bell Atlantic - Massachusetts' central offices (Re-Submitted Petition at 1). Vitts also states that its customer base was small in comparison to other states but that with the passage of time, Vitts has substantially increased the number of physical collocation sites and is aggressively seeking to expand its customer base (id.). Vitts states that its current efforts make the Massachusetts market for advanced telecommunications services an integral part of their overall region-wide corporate strategy and considers the issues under investigation in the present docket to be critical (id.). Vitts seeks entry as a limited participant in this docket with the right to submit comments to the Department for consideration (id. at 2). Although Vitts indicates that it does not anticipate presenting expert witnesses, Vitts is aware that it will need to petition the Department for full intervenor status if it wishes to do so (id.). The Department received no objections or comments to Vitts' late-filed Petition to Intervene or the Resubmitted Petition.

#### C. Analysis and Findings

First, the Hearing Officer finds that Vitts is substantially and specifically affected by this proceeding for several reasons: (1) Vitts asserts that the present proceedings may affect the interconnection agreement between Vitts' and Bell Atlantic; (2) Vitts is aggressively seeking to expand its customer base in this State; and (3) the Massachusetts market is an integral part of Vitts' overall region-wide corporate strategy.

Second, the Hearing Officer finds that Vitts has made a convincing showing of good cause for the late-filed Petition. Vitts asserts that it only recently became fully operational in Massachusetts and that, up until September 1999, it was physically collocated in relatively few Bell Atlantic central offices but has substantially increased the number of physical collocation sites with the passage of time. It should be noted that Vitts provided the basis for its late-filing in its Re-Submitted Petition and it must be emphasized that re-submitted or supplemental filings are not encouraged by the Department. Rather, petitions to intervene should be complete in all respects at the initial submission.

Last, in balancing the competing interests of Vitts' need to participate against the Department's need to conduct a proceeding in a complete, efficient and orderly fashion, the Hearing Officer finds that Vitts' delay in filing the petition to intervene will not cause undue prejudice to the other parties or delay this proceeding so long as Vitts adheres to the procedural schedule. Accordingly, the Hearing Officer grants the Petition and Re-Submitted Petition to Intervene filed by Vitts Networks, Inc. as a limited participant with the right to receive all documents filed at the Department and the right to submit comments to the Department for consideration.

III. RULING

Accordingly, after due consideration, the Hearing Officer hereby grants the Late-Filed Petition to Intervene filed by Vitts Networks, Inc. as a limited participant with the rights of receiving all documents filed at the Department, and the right to submit comments and/or briefs to the Department for consideration. As a limited participant, Vitts does not have the right to present witnesses, to cross-examine witnesses, or to appeal the final decision of the Department. Vitts shall abide by the procedural schedules set forth and any subsequent revisions and shall not delay these proceedings. In the event Vitts seeks full intervenor status at a future date, the Hearing Officer notes that such a request will not automatically be granted but will be balanced against the Department's need to conduct these proceedings in a complete, efficient and orderly fashion.

Under the provision of 220 C.M.R. § 1.06(6)(d)(3), any aggrieved party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation by December 6, 1999, at 5:00 p.m. A copy of this Ruling must accompany any appeal. Any response to any appeal must be filed by December 9, 1999, at 5:00 p.m.

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Date

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Tina W. Chin, Hearing Officer